

### **REMARKS/ARGUMENTS**

In this amendment, claims 1 and 17 are amended. Support can be found in Paragraph [0031], lines 4-11 and paragraph [0005], of the present specification. Claim 12 is amended for clarification. Support can be found in Paragraph [0031] of the present specification. No new matter is introduced.

#### ***Claim Rejection – 35 USC § 112***

The Office Action rejected claims 1-4, 7-19 and 21 under Section 112, first paragraph, as failing to comply with the written description requirement. According to item 4 of the Office Action, the wording “specified sampling” in claims 1 and 17 was not originally described in the specification. Applicant has amended claims 1 and 17 to delete the word “sampling.” Applicant respectfully submits that the present wording “specified time point” is adequately described in the specification, particularly paragraph [0031]. Applicant respectfully requests withdrawal of the rejection under Section 112, first paragraph.

The Office Action rejected claims 12-16 under section 112, second paragraph as being indefinite. Claim 12 has been amended to clarify the issued raised in the Office Action. Applicant respectfully submits that the claim 12 is clear and definite under Section 112, second paragraph and requests withdrawal of the rejection.

#### ***Claim Rejections – 35 USC § 102***

The Office Action rejected claims 1-4, 7-19 and 21 under Section 102(e) as being anticipated by Kadambi (U.S. Patent Application Publication No. 20050232274).

#### **Re claims 1 and 17**

Kadambi fails to teach or suggest that a candidate to be transferred is the least data packet amount among data packet flows and that the least data packet is realized by optionally rearranging the data packet flows in order according to data packet amount at a specified time point. In other words, the data packet amounts of the data packet flows co-existent at the same time are compared. The rearrangement of the data packet flows in sequence according to data

packet amount aims to locate the data packet flow having the least data packet amount at that time. This feature is discussed in greater detail in paragraph [0031].

In contrast, according to Kadambi's Paragraph [0451], which is cited by the examiner to anticipate such a feature, and Paragraphs [0444] and [0445], the number of bits in the *previous* packet and the number of bits in the *current* packet are compared. Kadambi does not compare the data packet amount of co-existent data packet flows. Thus, Applicant respectfully submits that Kadambi does not anticipate claims 1 and 17.

#### **Re claim 12**

Kadambi fails to teach or suggest any step of transmitting a broadcast data packet following said first data packet flow via said first data channel if said second data packet flow is determined to be transferred from said first data channel to a second data channel according to the comparing result. Applicant respectfully submits that Kadambi does not anticipate claim 12.

#### **Re claims 2-4, 7-16, 18-20 and 21**

Since claims 2-4 and 7-16 are dependent from claim 1 and claims 18-20 and 21 are dependent from claim 17, Applicant respectfully submits that these claims are not anticipated by Kadambi. Furthermore, since Vepa et al. fails to disclose all of the claim elements lacking in the Kadambi patent, Applicant respectfully submits that claim 4 would not have been obvious from the cited references.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. If there are any remaining issues preventing allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

Respectfully submitted,

/Evan R. Witt/

---

Evan R. Witt  
Reg. No. 32,512  
Attorney for Applicant(s)

Appl. No. 10/757,969  
Amdt. dated October 7, 2008  
Reply to Office Action of July 9, 2008

Date: October 7, 2008  
KIRTON & McCONKIE  
1800 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111  
Telephone: 801/328-3600

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 50-0843.
--